

ORDINANCE NO. 530

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF LAS ANIMAS, COLORADO, OF ITS SEWER REVENUE REFUNDING BONDS, SERIES 1990, IN THE PRINCIPAL AMOUNT OF \$280,000 FOR THE PURPOSE OF REFUNDING A PORTION OF THE VALID AND OUTSTANDING SEWER REVENUE BONDS OF THE CITY; PRESCRIBING THE FORM OF SAID BONDS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS FROM THE NET REVENUES OF THE SEWER SYSTEM; PROVIDING FOR THE PROCEEDS OF THE BONDS TO BE DEPOSITED IN A SEPARATE ESCROW ACCOUNT FOR THE PAYMENT OF THE BONDS BEING REFUNDED; PROVIDING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Las Animas, Bent County, Colorado (the "City"), presently operates a wastewater system for the City and its inhabitants (the "Sewer System"); and

WHEREAS, the City has heretofore duly authorized, sold, issued, and delivered to the purchaser thereof \$1,130,000 of its Sewer Revenue Bonds, Series 1984, dated February 1, 1984, of which issue there remains outstanding the total amount of \$990,000 (the "Outstanding Bonds"), bearing interest payable semiannually, on June 1 and December 1 each year, and maturing serially on December 1 as follows:

<u>Maturity</u>	<u>Amount</u>	<u>Interest Rate</u>
1990	\$ 25,000	9.500%
1991	30,000	9.750
1992	35,000	10.000
1993	50,000	10.125
2003	850,000	11.000

WHEREAS, the Outstanding Bonds maturing on December 1, 2003 are subject to redemption prior to maturity, in whole or in part, in integral multiples of \$5,000, at the option of the City, by lot within such maturity (giving proportionate weight to Bonds in denominations larger than \$5,000), in such manner as the paying agent may determine, on December 1, 1993, or on any interest payment date thereafter for the principal amount of each Bond or

portion thereof so redeemed and accrued interest to the redemption date plus a premium of one percent (1%) of the principal amount of each Bond or portion thereof so redeemed; and

WHEREAS, the principal of, premium if any, and interest on the Outstanding Bonds are payable at Central Bank Denver, National Association, Denver, Colorado, as paying agent; and

WHEREAS, none of the Outstanding Bonds have heretofore been refunded, nor have any of the same been redeemed or otherwise paid, cancelled, or retired by the City; and

WHEREAS, the Outstanding Bonds are revenue obligations of the City, payable solely from the pledged revenues of the sewer system as described in the ordinance authorizing the issuance of the Outstanding Bonds; and

NOW, THEREFORE be it Resolved
WHEREAS, it has been determined by the City Council of the City (the "City Council") that by entering into and completing a refunding program at this time, which refunding program includes the simultaneous issuance of general obligation sewer bonds and sewer revenue bonds, the City Council can reduce the total principal and interest due on the Outstanding Bonds and modify or eliminate restrictive contractual limitations appertaining to the Outstanding Bonds; and

SECTION 1 WHEREAS, pursuant to Title 11, Article 56, Part 1, C.R.S., the City is authorized to issue bonds for the purpose of refunding valid outstanding bonds of the City whenever such refunding is advantageous to the City; and

WHEREAS, the City Council has determined and hereby determines that it is advantageous to the City and the inhabitants thereof that the Outstanding Bonds be refunded and that general obligation refunding bonds in the principal amount of \$795,000 and that sewer revenue refunding bonds in the principal amount of \$280,000 (collectively, the "Bonds") be issued for such purpose; and

WHEREAS, the City has in its treasury and legally available for such purpose, an amount not to exceed \$145,000,

which the City Council has determined to deposit, together with the proceeds derived from the sale of the Bonds, in a special fund and trust account, to be established as herein authorized, for the purpose only of paying the principal of, premium if any, and interest on the Outstanding Bonds as they become due and payable, all as is more particularly hereinafter set forth; and

WHEREAS, the sewer revenue refunding bonds shall have a first and prior lien on certain pledged revenues of the Sewer System, as set forth herein; and

Section 2 WHEREAS, the City has received a proposal from Kirchner Group, a division of George K. Baum & Company, Denver, Colorado, concerning the purchase of the Bonds, and has determined that the bonds shall be sold to Kirchner Group, a division of George K. Baum & Company, in accordance with their proposal, and that such sale is to the best advantage of the City; and

Section 3 WHEREAS, insofar as it is necessary to issue the Bonds immediately and close the transaction as soon as possible in order to take advantage of presently existing interest rates, this Ordinance is necessary to the immediate preservation of the public health and safety; and

WHEREAS, the City is providing for the issuance of the general obligation sewer refunding bonds pursuant to a separate ordinance and, with regard to the sewer revenue refunding bonds, it is necessary to provide for the form of the bonds, the bond details, the payment of the bonds, and other provisions relating to the authorization, issuance, and sale of the bonds; and

WHEREAS, pursuant to §24-17-110, C.R.S., and §18-8-308, C.R.S., all known potential conflicting interests of the members of the City Council, if any, were disclosed to the Colorado Secretary of State and to the City Council in writing at least 72 hours in advance of this meeting:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAS ANIMAS, COLORADO:

Section 1. Definitions. As used herein, the following terms shall have the respective meanings set forth below, unless the context clearly indicates otherwise:

Bank: Central Bank Denver, National Association, Denver, Colorado, or its successor, a commercial bank duly organized and existing under the laws of the State of Colorado, being a member of the Federal Deposit Insurance Corporation, and having full and complete trust powers, with which the Escrow Account is established and maintained.

Bond Fund: the "City of Las Animas Sewer Revenue Refunding Bond Fund, 1990" created by Section 14 hereof, for the purpose of paying the principal of, premium if any, and interest on the Bonds and any Parity Lien Bonds when due.

Bond Purchase Agreement: the agreement between the City and the Underwriter, concerning purchase of the Bonds by the Underwriter.

Bond Registrar: Central Bank Denver, National Association, Denver, Colorado, or its successor, which shall perform the functions of bond registrar with respect to the Bonds.

Bonds: the City of Las Animas Sewer Revenue Refunding Bonds, Series 1990, dated May 1, 1990, issued in the aggregate principal amount of \$280,000, as authorized by this Ordinance.

Certified Public Accountant: a certified public accountant within the meaning of Section 12-2-115, C.R.S., licensed to practice in the State of Colorado.

City: the City of Las Animas, Bent County, Colorado.

City Council: the governing body of the City.

Code: the Internal Revenue Code of 1986, as amended.

Combined Average Annual Principal and Interest Requirements: with regard to any two or more particular issues of bonds or other obligations, the aggregate of all future payments of principal of and interest on all of said issues (excluding redemption premiums) to become due from the date of computation to the date of maturity of the latest maturing obligation of any of

said issues, divided by the number of years between said dates; provided that if any particular issue has a single principal payment date and is issued as interim notes or securities in anticipation of permanent financing, such principal amount shall be excluded from this computation.

Consulting Engineer: any qualified, registered, or licensed professional engineer practicing under the laws of the State of Colorado, who is independent in fact and not an officer or employee of the City.

C.R.S.: the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

Escrow Account: the "City of Las Animas Sewer Revenue Refunding Bond Escrow Account, 1990", established by the Ordinance authorizing the issuance of the General Obligation Bonds.

Escrow Agreement: the agreement between the City and the Bank dated as of May 1, 1990, concerning the establishment and maintenance of the Escrow Account.

Escrow Supplement: an amount not to exceed \$145,000 of moneys held in the City's treasury and legally available for allocation, as a supplement to the proceeds of the Bonds, for the purpose of paying the principal of and interest on the Outstanding Bonds at their respective maturities.

Event of Default: any one or more of the events set forth in Section 21 of this Ordinance.

Federal Securities: direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.

Fiscal Year: the twelve months commencing January 1 of any year and ending December 31 of said year.

General Obligation Bonds: the City of Las Animas General Obligation Sewer Refunding Bonds, Series 1990, dated May 1, 1990, issued in the aggregate principal amount of \$795,000, as authorized by a separate ordinance adopted and approved on the same date as this Ordinance.

Gross Revenues: all income and revenues derived by the City from any rates, fees, tap fees, tolls, and charges for the services furnished by, or the use of, the Sewer System, including interest income accruing from moneys held to the credit thereof.

Independent Accountant: a Certified Public Accountant practicing under the laws of the State of Colorado who is independent in fact and not an officer or employee of the City.

Net Revenues: the Gross Revenues, less the Operation and Maintenance Expenses.

Operation and Maintenance Expenses: all reasonable and necessary current expenses of the City, paid or accrued, for operating, maintaining, and repairing the Sewer System, including legal and overhead expenses of the City directly related to the administration of the Sewer System, payments in lieu of taxes, insurance premiums, audits, charges of depository banks and paying agents, professional services, salaries and administrative expenses, labor, and the cost of materials and supplies for current operation, but not including depreciation, legal liabilities not based on contract, the cost of capital improvements, replacements, or extensions to the Sewer System, or charges for the accumulation of reserves.

Ordinance: this Ordinance which authorizes the issuance of the Bonds.

Outstanding Bonds: the City's Sewer Revenue Bonds, Series 1984, dated February 1, 1984, in the outstanding principal amount of \$990,000, authorized by Ordinance No. 504, finally adopted and approved on January 24, 1984.

Owner: the registered owner of any Bond, as shown by the registration books maintained by the Bond Registrar.

Parity Lien Bonds: one or more series of additional bonds, notes, interim securities, or other obligations issued by the City pursuant to the provisions hereof having a lien on the Net Revenues which is on a parity with the lien of the Bonds.

Paying Agent: Central Bank Denver, National Association, Denver, Colorado, or its successor, which shall perform the function of paying agent with respect to the Bonds.

Paying Agent and Registrar Agreement: the agreement between the City and the Paying Agent/Bond Registrar, dated as of May 1, 1990, concerning registration and payment of the Bonds.

Record Date: the fifteenth (15th) day of the calendar month next preceding each interest payment date of the Bonds.

Required Reserve: the amount of \$20,000, plus the amount, if any, to be deposited to the Reserve Account pursuant to the provisions of the ordinance or other legislative enactment authorizing the issuance of Parity Lien Bonds.

Reserve Account: the "City of Las Animas Sewer Revenue Refunding Bond Reserve Account, 1990" established by Section 14 hereof.

Sewer System: the City's sanitary sewer facilities and properties now owned or hereafter acquired, whether situated within or without the City boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto.

Subordinate Lien Bonds: one or more series of additional bonds, notes, interim securities, or other obligations issued by the City pursuant to the provisions hereof having a lien on the Net Revenue which is subordinate or junior to the lien of the Bonds.

Underwriter: Kirchner Group, a division of George K. Baum & Company, Denver, Colorado, or the successor thereto.

Section 2. Authorization. In accordance with the constitution of the State of Colorado; Title 11, Article 56, C.R.S.; and all other laws of the State of Colorado thereunto enabling, there shall be issued sewer revenue refunding bonds of the City, each to be designated "Sewer Revenue Refunding Bond, Series 1990", in the total principal amount of \$280,000, for the purpose of refunding the Outstanding Bonds.

Section 3. Special Obligations. The Bonds, together with the interest thereon, shall be payable only out of (i) the Bond Fund, into which the City covenants to deposit Net Revenues in amounts sufficient to pay promptly, when due, the principal of and interest on the Bonds, or (ii) if necessary, from the Reserve Account. The Bonds shall constitute an irrevocable and first lien upon the Net Revenues, but not an exclusive first lien, and the Net Revenues are hereby pledged to the payment of the Bonds. The Owners may not look to any general or other fund of the City for the payment of the principal of and interest on the Bonds, and the Bonds shall not constitute a debt or an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be general obligations of the City.

Section 4. Bond Details. The Bonds shall be issued only as fully registered Bonds without coupons in the denomination of \$5,000 each or any integral multiple thereof. Unless the City shall otherwise direct, the registered Bonds shall be numbered separately from 1 upward, with the number of each Bond preceded by "R-".

The Bonds shall be dated as of May 1, 1990, and shall bear interest payable semiannually on each June 1 and December 1, commencing on December 1, 1990, and shall mature on December 1 each year, as follows:

<u>Amount</u>	<u>Maturity</u>	<u>Interest Rate</u>
\$ 65,000	1990	6.50%
40,000	1991	6.70
45,000	1992	6.80
60,000	1993	6.90
70,000	1994	7.00

The maximum net effective interest rate authorized for this issue of Bonds is 10.00% per annum, and the actual net effective interest rate is less than that rate.

Section 5. Payment of Bonds; Paying Agent and Bond Registrar. The principal of the Bonds is payable in lawful money

of the United States of America to the Owner of each Bond upon maturity or prior redemption and presentation at the principal office of the Paying Agent. Notwithstanding anything contained in this Ordinance to the contrary, interest on any Bond is payable to the person in whose name such Bond is registered, at his address as it appears on the registration books maintained by or on behalf of the City by the Bond Registrar, at the close of business on the Record Date, irrespective of any transfer or exchange of such Bond subsequent to such Record Date and prior to such interest payment date. Such payment shall be paid by check or draft of the Paying Agent mailed on or before the interest payment date to such Owner.

If the date for making any payment or performing any action hereunder shall be a legal holiday or a day on which the principal office of the Paying Agent or Bond Registrar is authorized or required by law to remain closed, such payment may be made on the next succeeding day which is not a legal holiday or a day on which the principal office of the Paying Agent or Bond Registrar is authorized or required by law to remain closed.

The principal of and interest on the Bonds shall be paid in accordance with the terms of the Paying Agent and Registrar Agreement.

Section 6. Prior Redemption. The Bonds are not subject to redemption prior to maturity.

Section 7. Form and Execution of Bonds. The Bonds shall be signed with the facsimile or manual signature of the Mayor of the City, sealed with a facsimile or manual impression of the seal of the City, and attested and countersigned by the facsimile or manual signature of the City Clerk and Treasurer. Should any officer whose facsimile or manual signature appears on the Bonds cease to be such officer before delivery of the Bonds to the Underwriter, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes.

The Bonds may contain a reproduction of the opinion of nationally recognized municipal bond counsel as to the Bonds and a certification of such opinion by the City Clerk.

The Bonds shall recite that they are issued under the authority of Title 11, Article 56, Part 1, C.R.S. Such recital shall conclusively impart full compliance with all provisions and limitations of said Article 56, and all Bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

The Bonds shall be in substantially the following form:

[Form of Bond]

No. R- _____

\$ _____

[Front of Bond]
UNITED STATES OF AMERICA
STATE OF COLORADO
COUNTY OF BENT
CITY OF LAS ANIMAS
SEWER REVENUE REFUNDING BOND, SERIES 1990

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>ORIGINAL ISSUE DATE</u>	<u>CUSIP</u>
_____	_____	MAY 1, 1990	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT:

DOLLARS

The City of Las Animas, in the County of Bent and State of Colorado, for value received, hereby promises to pay, out of the special funds or accounts hereinafter designated but not otherwise, to the registered owner named above or registered assigns, on the maturity date specified above, the principal amount specified above. In like manner the City promises to pay interest on such principal amount (computed on the basis of a 360-day year of twelve 30-day months) from the interest payment date next preceding the date of registration and authentication of this Bond, unless this Bond is registered and authenticated prior to December 1, 1990, in which event this Bond shall bear interest from May 1, 1990, at the interest rate per annum specified above. Interest on this Bond is payable semiannually on June 1 and December 1 each year, commencing on December 1, 1990, until such principal amount is paid at maturity. The principal of this Bond is payable in lawful money of the United States of America to the registered owner upon maturity and presentation at the principal

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office of Central Bank Denver, National Association, Denver, Colorado, or its successor, as Paying Agent.

Payment of each installment of interest shall be made to the registered owner hereof whose name shall appear on the registration books of the City maintained by or on behalf of the City by Central Bank Denver, National Association, Denver, Colorado, or its successor, as Bond Registrar, at the close of business on the fifteenth (15th) day of the calendar month next preceding each interest payment date (the "Record Date"), and shall be paid by check or draft of the Paying Agent mailed on or before the interest payment date to such registered owner at his address as it appears on such registration books.

If the date for making any payment or performing any action shall be a legal holiday or a day on which the principal office of the Paying Agent or Bond Registrar is authorized or required by law to remain closed, such payment may be made or act performed on the next succeeding day which is not a legal holiday or a day on which the principal office of the Paying Agent or Bond Registrar is authorized or required by law to remain closed.

Bonds of this issue are not subject to redemption prior to maturity.

REFERENCE IS HEREBY MADE TO FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF FULLY SET FORTH IN THIS PLACE.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the authorizing Bond Ordinance until the certificate of authentication hereon shall have been signed by the Bond Registrar.

IN TESTIMONY WHEREOF, the City Council of the City of Las Animas, Colorado, has caused this Bond to be signed by the

facsimile signature of the Mayor of the City, sealed with a facsimile of the seal of the City, and attested and countersigned by the facsimile signature of the City Clerk and Treasurer, all as of the 1st day of May, 1990.

(FACSIMILE
S E A L)

CITY OF LAS ANIMAS
BENT COUNTY, COLORADO

By: (Facsimile Signature)
Mayor

ATTESTED AND COUNTERSIGNED:

(Facsimile Signature)
City Clerk and Treasurer

[Form of Bond Registrar's Certificate of Authentication]

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within-mentioned Bond Ordinance.

Date of Registration
and Authentication:

CENTRAL BANK DENVER, NATIONAL
ASSOCIATION, DENVER, COLORADO,
as Bond Registrar

By: _____
Authorized Signatory

[Back of Bond]
ADDITIONAL PROVISIONS

This Bond is one of a series aggregating Two Hundred Eighty Thousand Dollars (\$280,000) par value, all of like date, tenor, and effect except as to number, principal amount, interest rate, and date of maturity, issued by the City Council of the City of Las Animas, Bent County, Colorado, for the purpose of refunding valid and outstanding sewer revenue bonds of the City, by virtue of and in full conformity with the constitution of the State of Colorado; Title 11, Article 56, Part 1, C.R.S.; and all other laws of the State of Colorado thereunto enabling, and pursuant to the duly adopted Ordinance authorizing the issuance of this Bond. Pursuant to Section 11-56-101(6) of said Article 56, C.R.S., such recital shall conclusively impart full compliance with all of the provisions and limitations of said Article and Part, and this Bond issued containing such recital is incontestable for any cause whatsoever after its delivery for value. It is hereby recited, certified, and warranted that all of the requirements of law have been fully complied with by the proper officers in issuing this Bond.

The principal of and interest on this Bond are payable only out of (i) a special fund of the City created in full conformity with law and designated as the "City of Las Animas Sewer Revenue Refunding Bond Fund, 1990", into which the City covenants and agrees to deposit revenues of the sewer system after deduction of operation and maintenance costs (the "Net Revenues"), in amounts sufficient to pay the principal of and interest on the Bonds when the same become due and payable, and (ii) if necessary, the "City of Las Animas Sewer Revenue Refunding Bonds Reserve Account, 1990", all as is more particularly set forth in the Ordinance authorizing the issuance of this Bond. The Bonds of this issue constitute an irrevocable and first lien upon the Net Revenues, but not necessarily an exclusive first lien. Subject to

expressed conditions, additional obligations may be issued and made payable from the Net Revenues having a lien thereon subordinate and junior to the lien of the Bonds of this issue or, subject to additional expressed conditions, having a lien on the Net Revenues on a parity with the lien of the Bonds of this issue, in accordance with the provisions of said Ordinance.

It is hereby recited, certified, and warranted that for the payment of this Bond, the City has created and will maintain the special funds or accounts referred to above, and will deposit therein out of the Net Revenues the amounts specified in the authorizing Bond Ordinance, and out of such funds, as an irrevocable charge thereon, will pay the principal of and interest on this Bond in the manner provided by said Ordinance. For a description of such funds and accounts, the Net Revenues, the manner in which the authorizing Bond Ordinance may be amended, and the nature and extent of the security afforded thereby for the payment of this Bond, reference is made to the authorizing Bond Ordinance.

For the payment of this Bond and the interest thereon, the City pledges the exercise of all its lawful powers. THIS BOND DOES NOT CONSTITUTE A DEBT OR INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION, AND SHALL NOT BE CONSIDERED OR HELD TO BE A GENERAL OBLIGATION OF THE CITY.

The City and the Bond Registrar shall not be required to issue or transfer any Bonds during a period beginning at the close of business on the Record Date and ending at the opening of business on the first business day following the ensuing interest payment date.

This Bond may be exchanged at the principal office of the Bond Registrar for a like aggregate principal amount of Bonds of the same maturity of other authorized denominations. This Bond is transferable by the registered owner hereof, in person or by his attorney duly authorized in writing, at the principal office

of the Bond Registrar, but only in the manner, subject to the limitations, and upon payment of the charges provided in the authorizing Bond Ordinance and upon surrender and cancellation of this Bond. This Bond may be transferred upon the registration books upon delivery to the Bond Registrar of this Bond, accompanied by a written instrument or instruments of transfer in form and with guaranty of signature satisfactory to the Bond Registrar, duly executed by the owner of this Bond or his attorney-in-fact or legal representative, containing written instructions as to the details of the transfer of the Bond, along with the social security number or federal employer identification number of such transferee. In the event of the transfer of this Bond, the Bond Registrar shall enter the transfer of ownership in the registration books and shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of authorized denominations of the same maturity and interest rate for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time. The Bond Registrar may charge the owner of this Bond for every such transfer or exchange an amount sufficient to reimburse it for its reasonable fees and for any tax or other governmental charge required to be paid with respect to such transfer or exchange.

[Form of Transfer]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto _____

SOCIAL SECURITY OR FEDERAL EMPLOYER
IDENTIFICATION NUMBER OF ASSIGNEE

(Name and Address of Assignee)

the within Bond and does hereby irrevocably constitute and appoint _____, attorney, to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Signature of Registered Owner:

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature guaranteed:

(Bank, Trust Company, or Firm)

Section 8. Authentication. No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until a certificate of authentication on such Bond substantially in the form hereinabove set forth shall have been duly executed by the Bond Registrar, and such executed certificate of the Bond Registrar upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance. The Bond Registrar's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer or signatory of the Bond Registrar, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Bonds issued hereunder.

Section 9. Delivery of Bonds. Upon the adoption of this Ordinance, the City shall execute the Bonds and deliver them to the Bond Registrar, and the Bond Registrar shall authenticate the Bonds and deliver them to the Underwriter, as directed by the City, and in accordance with the Bond Purchase Agreement.

Section 10. Registration, Exchange, and Transfer of Bonds; Persons Treated as Owners. The Bond Registrar shall maintain the books of the City for the registration of ownership of each Bond as provided in this Ordinance. Bonds may be exchanged at the principal office of the Bond Registrar for a like aggregate principal amount of Bonds of the same maturity of other authorized denominations. Bonds may be transferred upon the registration books upon delivery of the Bonds to the Bond Registrar, accompanied by a written instrument or instruments of transfer in form and with guaranty of signature satisfactory to the Bond Registrar, duly executed by the owner of the Bonds to be transferred or his attorney-in-fact or legal representative, containing written instructions as to the details of the transfer of such Bonds, along with the social security number or federal employer identification number of such transferee. No transfer of

any Bond shall be effective until entered on the registration books.

In all cases of the transfer of a Bond, the Bond Registrar shall enter the transfer of ownership in the registration books and shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of authorized denominations of the same maturity and interest rate for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time in accordance with the provisions of this Ordinance. The Bond Registrar may charge the owner of such Bond for every such transfer or exchange of a Bond an amount sufficient to reimburse it for its reasonable fees and for any tax or other governmental charge required to be paid with respect to such transfer or exchange.

The City and Bond Registrar shall not be required to issue or transfer any Bonds during a period beginning at the close of business on the Record Date and ending at the opening of business on the first business day following the ensuing interest payment date

New Bonds delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same obligation as the Bonds surrendered, shall be secured by this Ordinance, and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The City, the Paying Agent, and the Bond Registrar may deem and treat the registered owner of any Bond as the absolute owner thereof for all purposes (whether or not such Bond shall be overdue), and any notice to the contrary shall not be binding upon the City, the Paying Agent, or the Bond Registrar.

Section 11. Destruction of Bonds. Whenever any outstanding Bond shall be delivered to the Bond Registrar for cancellation pursuant to this Ordinance and upon payment of the principal amount and interest represented thereby, or whenever any

outstanding Bond shall be delivered to the Bond Registrar for transfer pursuant to the provisions hereof, such Bond shall be cancelled and destroyed by the Bond Registrar and counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Bond Registrar to the City.

Section 12. Lost Bonds. Any Bond that is lost, stolen, destroyed, or mutilated may be replaced or paid by the Bond Registrar in accordance with and subject to the limitations of applicable law. The applicant for any such replacement Bond shall post such security, pay such costs, and present such proof of ownership and loss as may be required by applicable law, or in the absence of specific requirements, as may be required by the Bond Registrar.

Section 13. Disposition and Investment of Bond Proceeds. The Bonds shall be issued and sold for the purpose of funding the Escrow Account. Neither the Underwriter nor the subsequent Owners of any of the Bonds shall be responsible for the application or disposal by the City or any of its officers of the funds derived from the sale thereof.

All or any portion of the Bond proceeds may be temporarily invested or reinvested, pending such use, in Permitted Investments. It is hereby covenanted and agreed by the City that it will not make, or permit to be made, any use of the original proceeds of the Bonds, or of any moneys treated as proceeds of the Bonds within the meaning of the Code and applicable regulations, rulings, and decisions, or take, permit to be taken, or fail to take any action, which would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code and applicable regulations, rulings, and decisions.

Section 14. Creation of Accounts. There are hereby created and established the following funds and accounts, which may be established as book accounts and maintained by the City in accordance with this Ordinance:

- (i) Sewer Fund;

- (ii) Bond Fund, within which are the Interest Account and the Principal Account;
- (iii) Reserve Account; and
- (iv) Escrow Account.

Section 15. Sewer Fund. The City shall credit to the Sewer Fund all Gross Revenues immediately upon receipt. The City shall pay from the Sewer Fund all Operation and Maintenance Expenses as they become due and payable. After such payments, the Net Revenues shall be applied in the following order of priority:

FIRST: To the credit of the Interest Account, the amounts required by Section 16 hereof.

SECOND: To the credit of the Principal Account, the amounts required by Section 16 hereof.

THIRD: To the credit of the Reserve Account, the amounts required by Section 17 hereof.

FOURTH: To the credit of any other fund or account established for the payment of the principal of, premium if any, and interest on Subordinate Lien Bonds, including any sinking fund, reserve fund, or similar fund or account established therefor, in the amounts required by the ordinance or other enactment authorizing issuance of the Subordinate Lien Bonds.

FIFTH: To the credit of any other fund or account as may be designated by the City, to be used for any lawful purpose, any moneys remaining in the Sewer Revenue Fund after the payments and accumulations set forth in Section 15 FIRST through FOURTH hereof.

Section 16. Bond Fund. Upon delivery of the Bonds, the City shall credit to the Interest Account the accrued interest, if any, paid by the Underwriter. Not less than three (3) days before each interest payment date of the Bonds and any Parity Lien Bonds, the City shall credit to the Interest Account from the Net Revenue an amount equal to the interest coming due on the Bonds and on any Parity Lien Bonds on such interest payment date.

Not less than three (3) days before each principal payment date of the Bonds and any Parity Lien Bonds, the City shall credit to the Principal Account from the Net Revenue an amount equal to the principal coming due in connection with the Bonds and any Parity Lien Bonds on such principal payment date.

Moneys held in the Bond Fund may be invested or deposited in accordance with the laws of the State of Colorado. The investment of moneys in the Bond Fund shall, however, be subject to the covenants and provisions of this Ordinance. Any investment income earned on amounts on deposit in the Bond Fund shall remain in the Bond Fund. In such case, the deposits of Net Revenue to the Bond Fund required by this Section may be reduced accordingly.

Section 17. Reserve Account. Moneys in the Reserve Account shall be used, if necessary, to prevent a default in the payment of the principal of, premium, or interest on the Bonds and any Parity Lien Bonds; provided however, that if the ordinance or other legislative enactment authorizing the issuance of Parity Lien Bonds so provides, such Parity Lien Bonds will not be secured by or payable from the Reserve Account. The Reserve Account shall be funded initially by the deposit thereto of certain legally available moneys in the amount of the Required Reserve, and such moneys are hereby appropriated. The Reserve Account shall be maintained in the amount of the Required Reserve until such time as such amount, when combined with other moneys in the Bond Fund, will be sufficient to pay the principal of, premium if any, and interest on all of the Bonds and any Parity Lien Bonds secured by the Reserve Account, at which time such moneys may be applied for such purpose. If at any time the amount of the Reserve Account is less than the Required Reserve, then the City shall deposit to the Reserve Account from the Net Revenue, amounts sufficient to bring the amount credited to the Reserve Account to the Required Reserve. Such deposits shall be made as soon as possible after

such use, but in accordance with and subject to the limitations of this Ordinance.

The amount on deposit to the Reserve Account shall never exceed the amount of the Required Reserve. Moneys in the Reserve Account shall be invested in obligations or securities which are lawful investments, at the highest available yield. Investment income shall be retained in the Reserve Account so long as the balance thereof is less than the Required Reserve. If the balance of the Reserve Account equals the Required Reserve, investment income shall be withdrawn from the Reserve Account upon receipt and deposited in the Bond Fund to meet current debt service requirements.

For purposes of this Section, Reserve Account investments shall be valued on the basis of their original cost and not on the basis of their current market value.

Section 18. Maintenance of Rates and Coverage. The Board covenants that it will establish, maintain, enforce, and collect rates, fees, plant investment fees, availability fees, tolls, and charges for services furnished by or the use of the System to create Gross Revenue each Fiscal Year sufficient to pay Operation and Maintenance Expenses and to create Net Revenue in an amount equal to not less than 125% of the amount necessary to pay when due the principal of and interest on the Bonds and any Parity Lien Bonds coming due during such Fiscal Year, and to make up any deficiencies in the Reserve Account. In the event that the Gross Revenue at any time is not sufficient to make such payments, the City shall increase such rates, fees, plant investment fees, availability fees, tolls, and charges to an extent which will insure the payments and accumulations required by this Ordinance.

Section 19. Additional Covenants and Agreements. The City hereby further irrevocably covenants and agrees with each Owner that so long as any of the Bonds remain outstanding:

(a) The City will continue to operate and manage the System in an efficient and economical manner and keep and maintain

separate accounts of the receipts and expenses thereof in such manner that the Gross Revenue and the Net Revenue may at all times be readily and accurately determined.

(b) The City will furnish no free service from the System, and if the City shall use the facilities of the System for its own purposes, it shall pay monthly a fair and reasonable amount for such service. In no event shall the City pay a greater amount than would be charged a private consumer for the same amount of service. The City shall include in its annual appropriation and budget amounts sufficient to pay for all service so used.

(c) The City will not sell or alienate any of the property constituting any part or all of the System in any manner or to any extent as might reduce the security provided for the payment of the Bonds, but the City may sell any portion of such property which shall have been replaced by other similar property of at least equal value, or which shall cease to be necessary for the efficient operation of the System; provided however, that the proceeds of any such sale of property shall be included as part of the Gross Revenue.

(d) The City will promptly render bills for services furnished by or the use of the System, shall use all legal means to assure prompt payment thereof, shall take such action as may be necessary to make delinquent rates, fees, tolls, and charges of the System a lien upon the real property served, and to the extent permitted by law, shall discontinue service to any user who becomes delinquent in the payment of such charges until the delinquency and all interest, costs, and expenses incident thereto have been paid in full.

(e) At least once a year in the time and manner provided by law, the City will cause an audit to be performed of the records relating to the revenues and expenditures of the System, and shall mail a copy of such audit report to the Underwriter. Such audit may be made part of and included within

the general audit of the City, and made at the same time as the general audit. In addition, at least once a year in the time and manner provided by law, the City will cause a budget to be prepared and adopted. Copies of the budget and the audit will be filed with the division of local government in the State department of local affairs and the State auditor in the time and manner provided by law.

(f) The City will carry fire and extended coverage, workmen's compensation, public liability, and such other forms of insurance on insurable System property as would ordinarily be carried by utilities having similar properties of equal value, such insurance being in such amounts as will protect the System and its operation. In the event of any loss or damage to the System, or in the event part or all of the System is taken by the exercise of a power of eminent domain, the insurance proceeds or the condemnation award shall be used for restoring, replacing, or repairing the property lost, damaged, or taken, and the remainder thereof, if any, shall be considered as Gross Revenue; provided however, that if the Board determines that the operation of the System and the security for the Bonds will not be adversely affected thereby, the Board may determine not to restore, replace, or repair the property lost, damaged, or taken and all of the insurance proceeds or condemnation award shall be considered as Gross Revenue.

(g) Each City official or other person having custody of any funds derived from operation of the System, or responsible for the handling of such funds, shall be fully bonded at all times, which bond shall be conditioned upon the proper application of said funds.

Section 20. Parity Lien Bonds.

(a) No additional bonds, notes, interim securities, or other obligations shall be issued payable from the Net Revenue and having a lien thereon which is superior to the lien of the Bonds.

(b) The City may issue Parity Lien Bonds if:

(i) The City is then in substantial compliance with all of the covenants of this Ordinance.

(ii) The City is then current in the accumulation of all amounts required to be then accumulated in the Bond Fund and the Reserve Account, as required by this Ordinance.

(iii) The Net Revenue for the twelve (12) month period immediately preceding the date of issuance of such Parity Lien Bonds is sufficient to pay an amount representing not less than 125% of the Combined Average Annual Principal and Interest Requirements for the Bonds, any outstanding Parity Lien Bonds, and the Parity Lien Bonds proposed to be issued. For purposes of such test, the Net Revenue may be increased if there has been adopted a schedule of increases in rates, fees, plant investment fees, availability fees, tolls, and charges during or since the preceding twelve (12) month period by adding to the actual revenues for said preceding twelve (12) month period, an estimated sum equal to 100% of the estimated increase in revenues which would have been realized during said preceding twelve (12) month period, had such increase been in effect during all of said preceding twelve (12) month period.

(iv) The City receives a written certificate by an Independent Accountant or Consulting Engineer that the requirements of this Section are met, which certificate shall conclusively determine the right of the City to authorize, issue, sell, and deliver Parity Lien Bonds.

(c) So long as no Event of Default shall have occurred, nothing herein shall prevent the City from issuing Subordinate Lien Bonds.

Section 21. Events of Default. It is an Event of Default if:

(a) Payment of the principal of or premium due on any Bond is not made by the City when due at maturity or upon prior redemption.

(b) Payment of the interest on any Bond is not made by the City when due.

(c) The City is not capable of fulfilling its obligations hereunder.

(d) The City defaults in the punctual performance of its covenants hereunder for sixty (60) days after written notice shall have been given by the Owners of not less than 25% of the outstanding principal amount of the Bonds.

Section 22. Remedies. Upon the happening of any Event of Default, any Owner, or a trustee therefor, may protect and enforce his or its rights by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenants, the appointment of a receiver (the consent to such appointment being hereby granted), injunctive relief, or requiring the Board to act as if it were the trustee of an express trust, or any combination of such remedies; provided however, that any action brought pursuant to an Event of Default under Section 21(c) or (d) hereof may be brought only upon the written consent of the Owner or Owners of not less than 25% of the outstanding principal amount of the Bonds. All proceedings shall be maintained for the equal benefit and protection of all Owners. Any receiver appointed to protect the rights of Owners may take possession of and operate and maintain the System in the same manner as the City itself might do. The failure of any Owner to proceed does not relieve the City or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right, and the exercise of any right by any Owner shall not be deemed a waiver of any other right.

Section 23. Amendment. Within the limits of applicable law, any limitation in this Ordinance may be waived or modified by the written consent of the Owners of not less than seventy-five percent (75%) of the outstanding principal amount of the Bonds; except that the written consent of the Owners of one hundred

percent (100%) of the outstanding principal amount of the Bonds is required to:

- (a) Extend the maturity of any Bond;
- (b) Reduce the principal amount or interest rate of any Bond;
- (c) Create a lien upon the Net Revenue ranking prior to the lien created by this Ordinance;
- (d) Reduce the principal amount of the Bonds required for consent to any waiver or modifications; or
- (e) Establish priorities between Bonds.

Section 24. Defeasance. When all principal, premium if any, and interest in connection with the Bonds have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Ordinance. There shall be deemed to be such due payment of the Bonds when the City has placed in escrow and in trust with a commercial bank located within or without the State of Colorado, and exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities in which such amount may be initially invested) to meet all requirements of principal, premium if any, and interest as the same become due to their final maturities or upon designated prior redemption dates. The Federal Securities shall become due at or prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the City and such bank at the time of the creation of the escrow, or the Federal Securities shall be subject to redemption at the option of the holders thereof to assure such availability as so needed to meet such schedule. The investment of the amounts deposited in the escrow shall comply with the provisions of this Ordinance.

Section 25. Payment of Outstanding Bonds. The Bank is hereby authorized and directed to use the proceeds from the Bonds, the General Obligation Bonds, and the Escrow Supplement to provide

for the payment of the Federal Securities to be held in the Escrow Account and to fund the Escrow Account with the necessary beginning cash, if any, as required in accordance with the escrow sufficiency computations verified by a Certified Public Accountant.

Thereupon, the balance, if any, of Bond proceeds held by the Bank, the City, or any other person, shall be deposited in the Bond Fund. The foregoing provision shall apply only to excess funds in the Escrow Account on hand at the time of delivery of the Bonds, and no further distribution of funds on hand in the Escrow Account shall be made to the City except at the time of termination of the Escrow Agreement. The proceeds of the Bonds, the General Obligation Bonds, and the Escrow Supplement, when invested by the Bank, shall at all times be at least sufficient to pay the principal of, premium if any, and interest on the Outstanding Bonds under and in accordance with the following schedule:

(a) Outstanding Bonds maturing from 1990 to 1993, inclusive, shall be paid and retired at their maturity dates according to their original terms.

(b) Outstanding Bonds maturing in 2003 shall be called for redemption prior to such maturity date, on December 1, 1993, at par, accrued interest, and a premium of 1.0% of the principal amount so redeemed.

(c) Interest on the Outstanding Bonds which matures in the years 1990 and thereafter shall be paid semiannually each year on the proper interest payment dates according to their original terms until the Outstanding Bonds mature or are called for prior redemption in accordance with this Section.

Section 26. Investment of Escrow Account. In accordance with the Escrow Agreement, the Bank shall invest the funds on deposit in the Escrow Account in non-callable Federal Securities only, and shall fully secure any cash balance in the Escrow Account in the manner required by law for other trust funds;

provided however, that the Bank may substitute obligations in the Escrow Account pursuant to the Escrow Agreement.

Section 27. Additional Deposits. If for any reason the funds on hand in the Escrow Account shall be at any time insufficient to meet payments of the principal of, premium if any, and interest on the Outstanding Bonds as the same shall become due and payable in accordance with the schedule set forth herein, the City shall forthwith deposit in the Escrow Account, from the Net Revenue, such additional funds as may be required to pay the entire amount about to become due and payable.

Section 28. Obligations of Bank. The Bank shall from time to time redeem at maturity all or a portion of the noncallable Federal Securities in the Escrow Account in sufficient amounts so that the proceeds therefrom and the interest thereon as the same accrues will be sufficient to pay the principal of, premium if any, and interest on the Outstanding Bonds as the same shall become due and payable in accordance with the schedule set forth herein.

Section 29. Notice of Refunding, Call, and Redemption. The City may give notice of the refunding of the Outstanding Bonds, on or about the time of such refunding, by mailing such notice to the paying agent and original purchaser of the Outstanding Bonds. Prior to the date of any prior redemption of the Outstanding Bonds as set forth herein, notice of call and redemption of the Outstanding Bonds shall be given in the time and manner required by the resolution authorizing the issuance of the Outstanding Bonds.

Section 30. Authorization to Execute Collateral Documents. The Mayor, City Clerk, other officers of the City, and the members of the City Council are hereby authorized and directed to take any and all actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to the execution of the Bond Purchase Agreement, the Paying Agent and

Registrar Agreement, the Escrow Agreement, and such certificates and affidavits as may reasonably be required by the Underwriter.

Section 31. Declaration and Findings. The City Council, having been fully informed of and having considered all the pertinent facts and circumstances, does hereby find, determine, and declare:

(a) The funds and investments to be placed in the Escrow Account, together with interest to be derived from such investments, are in an amount which at all times shall be sufficient to pay the Outstanding Bonds as they become due in accordance with the schedule set forth herein, as to principal, premium if any, and interest, and the computations made in determining such sufficiency have been verified by a Certified Public Accountant; and

(b) The total aggregate amount of bonded indebtedness of the City does not now, nor shall it upon the issuance of the Bonds, exceed any applicable limit prescribed by the constitution or laws of the State of Colorado;

(c) The issuance of the Bonds, the refunding of the Outstanding Bonds, and all procedures undertaken incident thereto, are in full compliance and conformity with all applicable requirements, provisions, and limitations prescribed by the constitution and laws of the State of Colorado thereunto enabling, and particularly Title 11, Article 56, Part 1, C.R.S.; and

(d) Entering into and completing the refunding program herein authorized at this time will enable the City to: (i) modify or eliminate restrictive contractual limitations appertaining to the Outstanding Bonds; and (ii) reduce total principal and interest payable on the Outstanding Bonds.

Section 32. Costs and Expenses of Issuance. All costs and expenses incurred in connection with the issuance and payment of the Bonds, including without limitation, the Underwriter's discount, and all other expenses related to the refunding procedure, shall be paid from legally available moneys of the City and such moneys are hereby appropriated for that purpose.

Section 33. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the City and members of the City Council, consistent with the provisions of this Ordinance, relating to the authorization, sale, issuance, and delivery of the Bonds, are hereby ratified, approved, and confirmed.

Section 34. Approval of Official Statement. The City Council hereby approves the Preliminary Official Statement in the form presented at this meeting, and authorizes the preparation of a final Official Statement containing any updated information regarding items described in the Preliminary Official Statement which become known to the City prior to the date of delivery of the Bonds. Copies of the Preliminary Official Statement and final Official Statement are hereby authorized to be distributed by the Underwriter to all interested persons in connection with the sale of the Bonds.

Section 35. Ordinance Irrepealable. After any of the Bonds have been issued, this Ordinance shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 36. Emergency Declaration. Insofar as it is necessary to issue the Bonds immediately and close the transaction as soon as possible in order to take advantage of presently existing interest rates, the provisions of this Ordinance are hereby declared to be necessary to the immediate preservation of the public health and safety, and shall become effective upon adoption in accordance with Section 31-16-105, C.R.S.

Section 37. Repealer. All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 38. Severability. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 39. Recording and Authentication. Immediately on its passage this Ordinance shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor and City Clerk, and shall be published as required by law.

INTRODUCED, READ AND PASSED on first reading at a regular meeting of the City Council on April 3, 1990; ordered published in full in the Bent County Democrat in its issue of April 12, 1990, and consideration on final passage set for the

C-LINE #62038
CLEAR TOPPER

regular meeting of the City Council to be held on Tuesday, May 1, 1990, at 7:30 P.M. at the City Hall, in Las Animas, Colorado.

(S E A L)

Leonard Hernandez
Mayor

ATTESTED:

Lila M. Maupin
City Clerk

(The following to be inserted upon final publication
of the Ordinance)

FINALLY ADOPTED AND APPROVED this 1st day of May, 1990.

(S E A L)

Leonard Hernandez
Mayor

ATTESTED:-

Lila M. Maupin
city clerk